

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 8:03-CR-77-T-30TBM

HATIM NAJI FARIZ

**DEFENDANT HATIM NAJI FARIZ'S MOTION TO COMPEL
PRODUCTION OF U.S. MARSHAL'S REPORT (DKT. #-687)
AND REQUEST FOR EXTENSION OF TIME FOR FILING RESPONSE TO THE
COURT'S ORDER DENYING DEFENDANT'S OBJECTION TO INNOMINATE
JURY AND MEMORANDUM OF LAW IN SUPPORT**

Defendant, HATIM NAJI FARIZ, by and through undersigned counsel, files this motion to compel production of U.S. Marshal's Report (Dkt.#-687) pursuant to the Fifth and Sixth Amendments to the U.S. Constitution. As grounds in support, Mr. Fariz states:

1. On November 10, 2004, this Honorable Court entered an Order granting in part and denying in part the Defendant, Hatim Naji Fariz' objections to the Court's use of an innominate jury and the wording of the proposed Juror Questionnaire (Dkts. #580, #705).

2. The Court's Order denying the defendant's objection to the use of an innominate jury was based in part on the Court's review of a report authored by the U.S. Marshal's Office (Dkt.# 687). The report apparently concluded that an innominate jury was advisable so as to protect the identity of the jurors.

3. The U.S. Marshal's Report has not been disclosed to undersigned counsel. Efforts to obtain the report have been rebuffed in the absence of an Order by this Court authorizing access and review.

4. Undersigned counsel is incapable of adequately responding to the Court's Order without the benefit of review and analysis of the materials the Court has relied upon in making its determination concerning the advisability of the innominate jury. Additionally, undersigned counsel's review of this document may lead counsel to concur with the Court's analysis and conclusions.

5. Undersigned counsel is willing to abide by any provisions the Court deems necessary for the protection of security concerns related to the report.

6. Undersigned counsel has conferred with Assistant United States Attorney Terry Zitek regarding the instant motion. AUSA Zitek has no objection but would request equal access to the document on behalf of the government.

7. A comprehensive review of all the relevant documents is required to ensure Mr. Fariz's rights to due process under the Fifth Amendment and fair trial under the Sixth Amendment.

_____Wherefore, the Defendant, Hatem Naji Fariz, respectfully requests this Honorable Court enter an appropriate Order granting all parties access to U.S. Marshal's Office Report (Dkt.# 687) and an Extension of Deadline for filing Objections to the Court's Order denying the Defendant's objection to the use of an innominate jury.

MEMORANDUM OF LAW

The “decision as to access (to judicial records and documents, including the duration of time they may be sealed) is one best left to the sound discretion of the trial court.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 599 (1978), *Baltimore Sun Co. v. Goetz*, 886 F.2d 60, 65 (4th Cir., 1989).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of November, 2004, a true and correct copy of the foregoing has been furnished by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Cherie L. Krigsman, Trial Attorney, U.S. Department of Justice; William Moffit and Linda Moreno, Counsel for Sami Amin Al-Arian; Bruce Howie, counsel for Ghassan Ballut; and to Stephen N. Bernstein, counsel for Sameeh Hammoudeh.

S/ Kevin T. Beck
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